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O.S.A.No.43 and 44 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR

AND

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

O.S.A.Nos.43 and 44 of 2015

1.M.Mahendra Dadha

2.Snehalatha Dadha

3.Surendra Dadha

4.Anjali Dadha

5.M/s.Dadha Estates (P) Ltd.

Represented by its Managing Director

Mr.M.Mahendra Dadha

6.M/s.Dadha Securi Lockers (P) Ltd.

Represented by its Director

Mr.M.Mahendra Dadha

7.M/s.L.Milapchand Dadha & Sons HUF)

Represented by its Kartha

Mr.M.Mahendra Dadha

... Appellants in both O.S.As

Vs.

1.Apoorva Dadha

2.S.Mohanchand Dadha



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3.M.Saradarmull Chordia

4.M.Ranjithmull Chordia

5.M.Maher Dadha

6.Madhu Dadha

7.Ankush Dadha

8.M/s.Dadha Brothers Limited

9.M/s.Alle Chemicals (P) Ltd

Represented by its Director

Mr.M.Mahendra Dadha / Surendhar Dadha

Administrative Office

... Respondents in both O.S.As

PRAYER: Original Side Appeals filed under Order 36 Rule 11 of Original Side Rules r/w clause 15 of Letters Patent, to set aside the order dated 02.03.2012 made in O.P.No.80 of 2006 and O.P.No.862 of 2007 and allow the above appeals.

For Appellants :: Mr.P.S.Raman, Senior Counsel
Assisted by
M/s.Gautam S.Raman

For Respondents :: Mr.K.Bijai Sundar
for M/s.Hari & Guru Associates-R1

Mr.H.Karthik Seshadri
Mrs.Elizabeth Seshadri -R5

R2 to R4, R6, R7 – N.A.
R8 and R9 - vacated



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COMMON JUDGMENT

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(Order of the Court was made by S.S.SUNDAR,J.)

These two appeals were filed against the order of the learned single Judge allowing in O.P.No.80 of 2006 and in O.P.No.862 of 2007, which were filed by the respective petitioners in Original Petitions under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 10.10.2005. O.S.A.No.43 of 2015 is against the order passed in O.P.No.80 of 2006 and O.S.A.No.44 of 2015 is against the order passed in O.P.No.862 of 2007.

2.Brief facts that are necessary for the purpose of disposal of these two appeals are as follows;

Pursuant to an Arbitration Agreement executed between the parties on 10.05.2005, the dispute between the appellants and the respondents was referred to Arbitration and an award was passed by the Arbitrator on 10.10.2005. The 1st respondent in O.S.A.No.43 of 2015 filed O.P.No.862 of 2007, whereas the 5th respondent viz. M.Maher Dadha filed O.P.No.80 of 2006. The learned single Judge heard both the petitions viz. O.P.No.862 of



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2007 and O.P.No.80 of 2006 and set aside the award mainly on the ground that the petitioner in O.P.No.862 of 2007 is not a party to the Arbitration Agreement and that he was not given proper notice. Since award is held vitiated in O.P.No.862 of 2007, consequently O.P.No.80 of 2006 is also allowed.

3.It is admitted before this Court that the petitions are not heard on merits but they were decided only on the grounds indicated above. Though it was contended before the learned single Judge that the petitioner in O.P.No.862 of 2007 was represented by his mother Mrs.Madhu Dadha as his Power of Attorney agent, the learned single Judge held that there is no recital in the arbitration agreement dated 10.05.2005 specifically mentioning that the petitioner was represented by his mother and therefore the arbitral proceedings are not binding on the son. In view of the fact that the O.P.No.862 of 2007 was allowed on technical grounds, O.P.No.80 of 2006 was also allowed without going into the merits of the contentions raised by the petitioner in O.P.No.80 of 2006.



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4.Learned Senior Counsel appearing for the appellants submitted that the Arbitration Agreement was signed by the mother representing her son namely the petitioner in O.P.No.862 of 2007. Referring to the Power of Attorney Deed and Arbitration Agreement, the learned Senior Counsel pointed out that the General Power of Attorney was executed by the petitioner in O.P.No.862 of 2007 is a valid one authorising the mother to sign on his behalf and that the mother of the petitioner had signed twice in the Agreement only to indicate that she had signed the Arbitration Agreement on her behalf and also on behalf of her principal namely her son and that has given her a specific authorisation to represent her son wherever she deems fit.

5.Learned Senior counsel further submitted that the Power Agent has not only represented her son in the Arbitration Agreement but also in the Court proceedings referring to the eviction proceedings initiated by the mother as Power Agent of the petitioner, initiated other proceedings against the third parties and also representing her son before the Debt Recovery Tribunal on the strength of the same General Power of Attorney dated



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25.02.2003.. The learned senior counsel pointed out that the son had given his mother power to sign any papers, affidavits etc in the name of her son and on his behalf and the mother had authority to represent her son. He also submitted before this Court that the son was estopped from questioning in the Arbitration proceedings having given his mother full authority. The learned Senior counsel submitted further that following an order of company Law Board and mediation by senior family members, arbitration agreement was entered into by the families to refer to the family disputes to non institutional arbitration to be conducted by three senior family members namely one paternal uncle and the maternal uncles of petitioner. It is contended that this fact would show the intention of the parties to resolve dispute through Arbitration by evenly balanced relatives.

6.Learned counsel appearing for the petitioner in O.P.No.862 of 2007 submitted that the Power of Attorney does not specifically authorise the mother to represent any court proceedings or to sign in the Arbitration Agreement. Referring to Section 186 of the Indian Contract Act, 1872, the learned counsel then submitted that the terms of Power of Attorney Deed



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cannot be interpreted that the mother was given authority either expressly or impliedly to sign the Arbitration Agreement. The learned counsel then referred to some precedents which we will consider in the later part of the order.

7.Learned counsel appearing for the petitioner in O.P.No.80 of 2006 submitted that his O.P.No.80 of 2006 was not decided on merits. He requested this Court to remit the matter in case this Court allows the Appeal as against the order passed in O.P.No.862 of 2007 to enable the petitioner in O.P.No.80 of 2006 to prosecute his petition in O.P.No.80 of 2006 on merits. The learned counsel appearing for the petitioner in O.P.No.80 of 2006 is inclined to argue the matter even before this court on merits.

8.Learned counsel for the appellants also agreed that he has no objection for issuing a direction to the learned single Judge to consider O.P.No.80 of 2006 and O.P.No.862 of 2007 on merits on any other ground or grounds raised by the petitioners in the respective petitions under Section 34 of Arbitration and Conciliation Act, 1986.



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9.Having regard to the submissions made by the learned counsel appearing for the petitioner in O.P.No.862 of 2007, this Court finds that Section 186 does not support the arguments of the learned counsel appearing for the petitioner in O.P.No.862 of 2007. Section 186 of the Indian Contract Act, 1872 reads as below;

“186.Agent's authority may be expressed or implied – The authority of an agent may be expressed or implied”.

10.In the present case, the question is whether the Arbitration Agreement specifically authorises the mother of the petitioner in O.P.No.862 of 2007 to represent him in the Arbitration Agreement? There is no dispute that the petitioner viz. Apoorva Dahda in O.P.No.862 of 2007 has executed a Power of Attorney deed on 25.02.2003. Clause 6 and 14 of the Power of Attorney Deed reads as follows;

Clause 6: *To sign any papers, affidavits, applications etc. in my name and on my behalf;*

Clause 14:*To Act any other things deeds and acts if my attorney deems fit by virtue of this GPA.*



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11.Though Power of Attorney Deed was executed for various purposes, this Court finds that the terms of General Power of Attorney Deed are drafted widely to cover all situation so that the Power Agent, the mother can act on behalf of her son whenever she deems fit by virtue of the power of attorney given to her.

12.It is the case of the petitioner in O.P.No.862 of 2007 that he was abroad during the relevant point of time when the Arbitration Agreement was signed. It is not an issue before this Court that the Arbitration Agreement dated 10.05.2005 was executed by the parties. The petitioner in O.P.No.862 of 2007 is also a party to the agreement, as his name was referred to as one of the parties of the second part. The mother has signed twice in every page in the Arbitration Agreement. It is the contention of the learned counsel for the appellants that the mother, as she was representing her son was required to sign twice in every page of the Arbitration Agreement and that the parties all along were made to believe that the mother had signed the Arbitration Agreement not only on her behalf but also on behalf of her son, the petitioner in O.P.No.862 of 2007.



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13.It is also brought to the notice of this Court that any other party to the arbitration or the son, the petitioner in O.P.No.862 of 2007 did not raise the objections any time during the pendency of proceedings before the Arbitrators. As a matter of fact, both mother and father of the petitioner in O.P.No.862 of 2007 have participated in the arbitration proceedings knowing that their son, the petitioner was made a party to the Arbitration Agreement. It is only after the award which was decided against the petitioners, the petitioner in O.P.No.80 of 2006 and O.P.No.862 of 2007, chose to challenge the award. When the petitioner in O.P.No.80 of 2006 challenged the award on merits, the petitioner in O.P.No.862 of 2007 challenged the award on the only ground that he was not a party to the Arbitration Agreement and the Arbitration Agreement is not binding on him.

14.Learned counsel appearing for the petitioner in O.P.No.862 of 2007 relied upon the judgment of the Hon'ble Supreme Court in ***Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust (2012) 8 SCC 706***, wherein the question whether the Power of Attorney was authorised to execute sale agreement



and sale deed was examined. The relevant paragraph is extracted hereunder;

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19. Next, we have to consider the power of attorney. It is settled that the power of attorney has to be strictly construed. In order to agree to sell or effect a sale by a power of attorney, the power should also expressly authorise the power to agent to execute the sale agreement / sale deed i.e. (a) to present the document before the Registrar; and (b) to admit execution of the document before the Registrar. A perusal of the power of attorney, in the present case, shows that it only authorises certain specified acts but not any act authorising entering into an agreement of sale or to execute sale deed or admit execution before the Registrar.

The Hon'ble Supreme Court has held that the Power of Attorney should be strictly construed. This Court is unable to get any point from the above judgment to support the petitioner in O.P.No.862 of 2007.

15.Learned counsel then relied upon the judgment of the Hon'ble Supreme Court reported in ***Umadevi Nambiar Vs. Thamarasseri Roman Catholic Diocese (2022) 7 SCC 90***, wherein it has been held as follows;

8.As could be seen from the judgments of the trial court



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and the High Court, the deed of general power of attorney executed by the appellant in favour of her sister on 21.7.1971, did not specifically contain any power of sale. Therefore, the trial court as well as the High Court held in no uncertain terms that the appellant's sister was not competent to sell the property to the predecessor-in-interest of the respondent. However, the learned counsel appearing for the respondent argued:

8.1. That while construing a document, all punctuation marks should be given due weightage.

8.2. That the deed of power of attorney was drafted by a doyen of the Bar.

8.3. That Clause 22 of the deed of power of attorney conferred upon the agent, the power to execute and register all documents.

8.4. That the power to execute a document and present the same for registration, should be understood to mean the power to execute documents requiring registration in the light of Section 49 of the Registration Act, 1908.

8.5. That, therefore, a bonafide purchaser like the respondent should not be made to suffer.

16. When the Hon'ble Supreme Court noticed that the general power of



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attorney executed by the appellant before the Hon'ble Supreme Court in favour of her sister did not specifically contain any power to execute the sale, it is held that the power of attorney was not authorised to sell the property to the predecessor interest of the respondent. This Court is unable to understand how the judgment would help the petitioner. In the present case, this Court has already observed that the power of attorney deed executed by the petitioner in favour of his mother specifically authorises her to represent her son wherever she deems fit. Since the son was in abroad when the mother was appointed as agent, it is quite evident that the son expected his mother to do everything on his behalf.

17. Another judgment of a learned single judge of this Court is also relied upon by the learned counsel which is the judgment in **Anantha Pillai Vs. Rathinasabapathy, (82) (L.W. 10)**. In the said judgment, this Court interpreted the specific recital in the power of attorney deed. On the basis of such recitals, it was contended on behalf of the principal that the power of attorney deed do not authorise the agent to execute an agreement to sell the property. It is in the said context, it is held that the specific clause in the



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Power of Attorney deed does not authorise the power agent either to execute the sale deed or the sale agreement. The relevant clause in the Power of

Attorney deed and the decision following the recitals are as follows:-

“சகல விதத்திலும் எனக்குச் சேர வேண்டிய துகைகளை செய்யவும் அவைகளுக்காக ரசீதுகள் கொடுக்கவும் என்னுடைய சொத்துக்கள் விஉறயமாய் செவின்யூ ஆபிஸ்களிலாவது நியாயஸ்தலங்களிலாவது இதர இடங்களிலாவது செய்ய வேண்டியதாக அப்போதைக்கு அப்போது ஏற்படும் விவகாரங்களை எனக்காக நடத்தவும் என்னால் இதராருக்கு பட்சத்தில் எனக்காக அவைகளை கொடுத்து தீர்த்து ரசீது பெறவும் எனக்காக சகல விதமான தஸ்தாவேஜீகளை அன்னியர்களுக்கு எழுதிக் கொடுக்கவும் அன்னியர்களால் எழுதி வாங்கவும்.’

The contention of the learned Counsel is that the power to. execute documents on behalf of Janaki Ammal will include the power to execute an agreement to sell and also to execute a sale deed. In this connection the learned Counsel strongly relied on a sale deed executed by Janaki Ammal in favour of one Kuppuswami Naidu on 2nd June, 1953 as supporting his contention that the power-of-attorney executed by Janaki



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Ammal in favour of the first defendant contained the authority to enter into an agreement to sell. That sale deed, dated 2nd June, 1953 expressly refers to the fact that earlier to that her husband as power-of-attorney agent of herself had entered into an agreement to sell and she was completing the transaction by executing the sale deed itself. That it was found necessary for Janaki Ammal personally to execute the sale deed, will be a sufficient indication to show that the parties themselves were aware of the fact that the first defendant did not have such a power. Apart from that fact, that in one instance Janaki Ammal ratified the agreement to sell entered into by the first defendant and completed the sale by executing the deed of conveyance, does not establish that the power-of-attorney itself conferred such a power on the first defendant. The general principles regarding the construction of a power-of-attorney are well-settled. Powers -of-attorney must be strictly construed as giving only such authority as they confer expressly or by necessary implication. Where an act purporting to be done under the power-of-attorney is challenged as being in excess of the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument either



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by express terms or by necessary implication. Some of the principles governing the construction of a power-of-attorney are : (1) the operative part of the deed is controlled by the recitals; (2) where an authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the performance of the particular acts; (3) the general words do not confer general powers but are limited to the purpose for which the authority is given and are construed as enlarging the special powers only when necessary for that purpose; (4) a power-of-attorney is construed so as to include all medium powers necessary for its effective execution. Bearing these general principles in mind the question for consideration is whether the power-of-attorney in this case authorised the first defendant to enter into an agreement to sell or authorised him to execute a sale deed. In my opinion the power granted to the first defendant to execute every type of document on behalf of Janaki Ammal will have to be understood with reference to particular acts specified in the documents itself, for which the power was granted. It must be remembered that the power was granted by a wife to a husband for managing her properties and not for liquidating the same. The apparent necessity for executing such a power was that being a woman she was not



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able to attend to the day-to-day requirements involved in the management of the properties and it is not as if she was not in a position to negotiate the terms of a sale or to execute a sale deed, which is not an every day occurrence. Mr. Rajagopala Iyer relied on the decision of this Court in *Venkataramana Iyer v. Narasinga Rao* 24 M.L.J. 180 : I.L.R. (1915) 38 Mad. 134, and contended that the power-of-attorney in this particular case was a general power-of-attorney. For the same purpose the learned Counsel relied on the decision of this Court in *Krishna Phoopathi Deo v. Raja of Vizianagaram* I.L.R. (1915)38 Mad. 832 : 26 M.L.J. 185. I must point out that there is no magic in the nomenclature of a power-of-attorney being a general power-of-attorney. The scope of the power has to be gathered from the language of the document. As was pointed out by this Court in the latter case relied on by the learned Counsel himself " Every document must be construed with reference to its particular terms, and differently worded documents afford but little assistance for correctly construing the document concerned in this case ". Therefore, even on the basis that the power-of-attorney executed by Janaki Ammal on 30th June, 1937, is a general power-of-attorney, still the question remains whether it authorised the first defendant to



execute a document like Exhibit A-l. Learned Counsel relied on a decision of the Calcutta High Court in [Narendra Nath v. Bimala Sundari](#) (1938) 42 C.W.N. 718, for the position that the agent's power is not limited to the physical act of signing documents relating to transactions entered into by the principals but he has also the power to enter into contracts himself on behalf of the principals and to make the necessary documents. In my opinion the question is whether any such power can be gathered from the terms of the document in question. I am clearly of the view that no such power can be gathered from the document in question. One feature I have already indicated is that the document does not confer expressly on the first defendant any power to alienate the properties either by way of sale, mortgage or otherwise. Secondly, the document is a detailed one referring to several acts to be done by the first defendant. Therefore, in the context of the detailed enumeration of the powers conferred on the first defendant to perform acts, the general words will have to be understood as enabling him to do such things as are necessary for the purpose of effectively performing those functions enumerated and conferred on the first defendant.”

18.Learned single judge was right in the said judgment that the



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specific power relied upon by the power of attorney holder does not authorise the power of attorney to execute a sale deed or a sale agreement on behalf of the principal. All the above three judgments relied upon by the learned counsel for the petitioner in O.P.No.862 of 2007 cannot be applied to the facts.

19.Having regard to the principles on the construction of documents judicial precedents and the language of Section 186 of the Indian Contract Act, 1872, this Court has hesitation to hold that terms of the power of attorney deed executed by the petitioner in O.P.No.862 of 2007 specifically authorises the mother to act on behalf of the petitioner to sign any document or paper or affidavit or application, in the name of petitioner and on his behalf. The power authorises the power of attorney viz. the mother to act as her son's attorney wherever deems fit by virtue of the power of attorney.

20.Having regard to the relationship between the petitioner in O.P.No.862 of 2007 and his mother, this Court is of the opinion that the mother had the authorisation to sign the Arbitration Agreement. Therefore,



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the Arbitration Award cannot be set aside as far as the petitioner in

O.P.No.862 of 2007 merely on the ground that there is no agreement.

Based on the same power, the mother had initiated proceedings for fixing fair rent in R.C.O.P.No.907 of 2005 as Power of Attorney and has filed a claim petition before the Recovery officers in O.A.No.143 of 1996. It is admitted that the two families constitute a HUF. When we hold that the mother has signed the arbitration agreement as Power of Attorney of her son, the understanding of parties is evident that mother participated in the proceedings as Power of Attorney of her son. Hence this Court is unable to sustain the order of the learned single Judge setting aside the award on the grounds stated. Therefore, the common order of the learned single Judge in O.P.No.80 of 2006 and O.P.No.862 of 2007 is set aside.

21.Since, this Court has now set aside the order passed in O.P.No.80 of 2006 and O.P.No.862 of 2007 as they were allowed only on technical grounds that the petitioner in O.P.No.862 of 2007 is not a party to the Arbitration Agreement and no notice was issued to him, this Court finds that it will be appropriate to remit the matter to dispose of O.Ps on merits. Since



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this Court has not gone into any other grounds raised by the petitioner in O.P.No.862 of 2007 and O.P.No.80 of 2006, remits the matters back to the learned single Judge to dispose of both the O.P.No.862 of 2007 and O.P.No.80 of 2006 on merits and in accordance with law.

22.These Original Side Appeals stand disposed of accordingly. No costs.

(S.S.S.R.,J.) (C.K.,J.)
21.06.2023

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